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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,277	03/01/2002	Steven Allen Toelke	128951	5185

7590

03/28/2003

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EXAMINER

STEFANON, JUSTIN

ART UNIT

PAPER NUMBER

3682

DATE MAILED: 03/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,277

Applicant(s)

TOELKE ET AL.

Examiner

Justin Stefanon

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 22-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 22-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claim 1, 5, 22-26, 30-33, and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pat. No. 6,151,986 to Willemsen et al.

Willemsen et al disclose, in Figure 10, an adjustable control pedal with a pivotable upper arm 18', with first and second guide slots 86,68 and a drive slot 30, all straight, a lower arm 10'' carrying a pedal 20, a first pin 58 and second pin 16, one in each guide slot, a screw 146 carried by a mounting bracket 60, a nut 34 secured to the lower arm, laterally extending through the drive slot to the screw, and a motor 160 to rotate the screw. The weight of the lower arm is supported by the upper arm through the pins. The upper arm pivots about an axis at a fixed position relative to the upper arm, spaced apart from the inclined drive slot. The first and second slots extend entirely through the upper arm, and the pins through the slots.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 26-29, 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,875,385 to Sitrin in view of Willemsen et al.

Sitrin discloses an adjustable control pedal with a pivotable upper arm 36, with first and second guide slots 36g, 36f and a drive slot 36e, a lower arm carrying a pedal 44, a first pin 38e and second pin 38h, one in each guide slot, a screw 46 carried by a mounting bracket 34c, a nut 52 secured to the upper arm, laterally extending through the drive slot to the screw, and a motor 48 to rotate the screw. The guide slots are formed on opposite sides of the drive slot. Sitrin discloses the use of nonparallel guide slots in Figure 1. The guide slots of both embodiments are straight and inclined. The weight of the lower arm is supported by the upper arm through the pins.

Sitrin discloses the claimed invention in the embodiment of Figure 3 except for the drive slot being straight. Willemsen et al. disclose an adjustable pedal with guide slots and a drive slot, all straight. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pedal of Sitrin with a straight guide slot, as taught by Willemsen et al. as a means of altering the range of adjustability of the pedal location.

Response to Arguments

5. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

Terminal Disclaimer

6. The terminal disclaimer filed on January 6, 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Patent No. 6,289,761 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3682

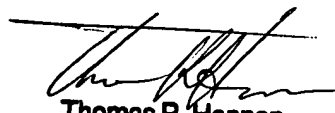
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows another screw adjusted pedal with straight guide slots which move relative to one another from parallel to non parallel orientation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin Stefanon whose telephone number is 703-305-1945. The examiner can normally be reached on Monday - Friday 6 - 3:30, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on 703-308-3668. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

js JS
March 24, 2003


Thomas R. Hannon
Primary Examiner